

AMENDED IN SENATE MAY 7, 2013
AMENDED IN SENATE APRIL 22, 2013
AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 155

Introduced by Senator Padilla

January 31, 2013

An act to amend Sections 3006, 3008, 3012, 3050, 3050.7, 3052, 3056, 3057, 3062, 3063, 3064, 3065, 3065.1, 3066, 3067, 3069.1, 11713.3, and 11713.13 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 155, as amended, Padilla. Vehicles: motor vehicle manufacturers and distributors.

Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee. Existing law prescribes procedures to be followed by franchisors, franchisees, and the board regarding claims for warranty reimbursement or incentive compensation. Existing law authorizes franchisors to conduct audits of franchisee warranty records and incentive records on a reasonable basis, and authorizes a franchisor to audit the franchisee's incentive records for 18 months, and warranty records for 12 months, after a claim is paid or credit issued. Existing law prohibits the disapproval of franchisee claims except for good cause, as specified, and requires that a notice of disapproval state the specific grounds upon which the disapproval is based. Existing law gives a franchisee one year from receipt of the notice of disapproval of an incentive compensation payment to appeal the disapproval to the franchisor and file a protest with the board.

This bill would revise these provisions to require, among other things, the franchisor to provide the franchisee with the specific grounds upon which any previously approved claims will be charged back, if the franchisor disapproves of a previously approved claim after an audit, and to prohibit a previously approved claim from being charged back to the franchisee except under certain circumstances, including when the claim is false or fraudulent. The bill would require the franchisor to provide a reasonable appeal process to allow the franchisee to respond to any disapproval with additional supporting documentation or information rebutting the disapproval, as provided. The bill would authorize the audit of a franchisee's records for 9 months after a claim is paid or credit is issued, as specified. The bill would give a franchisee 6 months from the date of receipt of a specified written notice to file a protest with the board, and would specify that in the protest proceeding the franchisor has the burden of proof.

Existing law requires every vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing. Existing law also requires the franchisor to file a copy of its warranty reimbursement schedule or formula with the board, *and requires the board to determine the reasonableness of the warranty reimbursement schedule or formula if the franchisee files a notice of protest with the board.*

This bill would additionally require a franchisor to adequately and fairly compensate each of its franchisees for labor and parts used to provide diagnostic services under a warranty. ~~The bill would also require, if the warranty reimbursement schedule or formula provides franchisee labor compensation on a flat-rate basis, the franchisor to allow the franchisee to use a published, nationally recognized, flat-rate labor time guide as the basis for determining the amount of time allocable for warranty repairs if the franchisee primarily uses the time guide to compute technician flat-rate compensation and charges for nonwarranty labor. The bill would permit the board, in determining the adequacy and fairness of the compensation, to consider published nationally recognized flat-rate time guides. The bill would also require, if the board determines that the warranty reimbursement schedule or formula fails to provide adequate compensation, the franchisor to correct the failure by amending or replacing the warranty~~

reimbursement schedule and implementing the correction as to all franchisees within 30 days after receipt of the board's order.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified practices, including requiring a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions.

This bill would prohibit a required facility alteration, expansion, or addition from being deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor if substantially similar goods or services are available from another vendor, except as specified. The bill would also prohibit the establishing or maintaining a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer's right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless certain requirements are satisfied. The bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from taking or threatening to take any adverse action against a dealer pursuant to a published export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle, unless the dealer knew or should have known of the customer's intent to export or resell the vehicle, as specified. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The distribution, sale, and service of new motor vehicles in
4 the State of California vitally affect the general economy of this
5 state and the public welfare.

6 (b) The new motor vehicle franchise system, which operates
7 within a strictly defined and highly regulated statutory scheme,
8 assures the consuming public of a well-organized distribution
9 system for the availability and sale of new motor vehicles
10 throughout the state, provides a network of quality warranty, recall,
11 and repair facilities to maintain those vehicles, and creates a
12 cost-effective method for the state to police those systems through
13 the licensing and regulation of private sector franchisors and
14 franchisees.

15 (c) Over the past decade, franchisors have unilaterally and
16 gradually reduced the amount of flat-rate labor time allocable to
17 warranty repairs by an unreasonable amount, and have failed to
18 properly reimburse dealers for repairing vehicles to conform to
19 the warranty established by the franchisor. Over this period,
20 franchisors have also regularly denied dealer warranty and
21 incentive program claims for technical reasons without providing
22 any rights to rebut the denial or correct technical errors through
23 reasonable appeal processes, which has resulted in dealers not
24 being reimbursed when repairing vehicles under the manufacturer
25 warranty or applying incentive money to a sale.

26 (d) Franchisors implement punitive policies toward dealers
27 when vehicles sold by dealers end up being exported, even when
28 the export takes place without dealer knowledge, resulting in
29 dealers being charged back for incentive funding that the dealer
30 accounted for in making the initial sale.

31 (e) Franchisors measure dealership sales, service, and customer
32 service performance against standards that are established
33 unilaterally and without dealer input. Many of these performance
34 standards are based upon national or statewide performance
35 averages that bear no resemblance to a dealer's local market.
36 Failure to adhere to these standards can result in disqualification
37 from incentive programs, imposition of unrealistic working capital
38 requirements, and even termination of a franchise agreement.

1 (f) Franchisors frequently establish facility models that require
2 dealers to purchase goods or services from specific vendors, many
3 of which are located outside of the United States. Those
4 requirements are generally nonnegotiable, even if a dealer can
5 obtain substantially similar goods or services from a local
6 California vendor.

7 (g) It is the intent of this act to ensure that new motor vehicle
8 dealers are treated fairly by their franchisors, that dealers are
9 reasonably compensated for performing warranty repairs on behalf
10 of their franchisor, that dealers are not punished when vehicles are
11 exported without dealer knowledge, that performance standards
12 take into account local market conditions, and that dealers be
13 allowed to obtain required goods or services through vendors of
14 their choosing.

15 SEC. 2. Section 3006 of the Vehicle Code is amended to read:

16 3006. The board shall organize and elect a president from
17 among its members for a term of one year at the first meeting of
18 each year. The newly elected president shall assume his or her
19 duties at the conclusion of the meeting at which he or she was
20 elected. Reelection to office during membership is unrestricted.

21 SEC. 3. Section 3008 of the Vehicle Code is amended to read:

22 3008. (a) All meetings of the board shall be open and public,
23 and all persons shall be permitted to attend any meeting of the
24 board, except that the board may hold executive sessions to
25 deliberate on the decision to be reached upon the evidence
26 introduced in a proceeding conducted in accordance with Chapter
27 5 (commencing with Section 11500) of Part 1 of Division 3 of
28 Title 2 of the Government Code.

29 (b) At all meetings of the board, open or executive, involving
30 an appeal from a decision of the Director of Motor Vehicles, the
31 director or his or her authorized representative may attend, present
32 the position of the department, and then shall absent himself or
33 herself from any executive session at the request of any member
34 of the board.

35 (c) Within the limitations of its powers and authority, and in
36 the event of disagreement between the board and the director
37 regarding the decision to be reached, the decision of the board
38 shall be final.

39 SEC. 4. Section 3012 of the Vehicle Code is amended to read:

1 3012. Each member of the board shall receive a per diem of
2 one hundred dollars (\$100) for each day actually spent in the
3 discharge of official duties, and he or she shall be reimbursed for
4 traveling and other expenses necessarily incurred in the
5 performance of his or her duties. The per diem and reimbursement
6 shall be wholly defrayed from funds that shall be provided in the
7 annual budget of the department.

8 SEC. 5. Section 3050 of the Vehicle Code is amended to read:

9 3050. The board shall do all of the following:

10 (a) Adopt rules and regulations in accordance with Chapter 3.5
11 (commencing with Section 11340) of Part 1 of Division 3 of Title
12 2 of the Government Code governing those matters that are
13 specifically committed to its jurisdiction.

14 (b) Hear and determine, within the limitations and in accordance
15 with the procedure provided, an appeal presented by an applicant
16 for, or holder of, a license as a new motor vehicle dealer,
17 manufacturer, manufacturer branch, distributor, distributor branch,
18 or representative when the applicant or licensee submits an appeal
19 provided for in this chapter from a decision arising out of the
20 department.

21 (c) Consider any matter concerning the activities or practices
22 of any person applying for or holding a license as a new motor
23 vehicle dealer, manufacturer, manufacturer branch, distributor,
24 distributor branch, or representative pursuant to Chapter 4
25 (commencing with Section 11700) of Division 5 submitted by any
26 person. A member of the board who is a new motor vehicle dealer
27 may not participate in, hear, comment, advise other members upon,
28 or decide any matter considered by the board pursuant to this
29 subdivision that involves a dispute between a franchisee and
30 franchisor. After that consideration, the board may do any one or
31 any combination of the following:

32 (1) Direct the department to conduct investigation of matters
33 that the board deems reasonable, and make a written report on the
34 results of the investigation to the board within the time specified
35 by the board.

36 (2) Undertake to mediate, arbitrate, or otherwise resolve any
37 honest difference of opinion or viewpoint existing between any
38 member of the public and any new motor vehicle dealer,
39 manufacturer, manufacturer branch, distributor branch, or
40 representative.

1 (3) Order the department to exercise any and all authority or
2 power that the department may have with respect to the issuance,
3 renewal, refusal to renew, suspension, or revocation of the license
4 of any new motor vehicle dealer, manufacturer, manufacturer
5 branch, distributor, distributor branch, or representative as that
6 license is required under Chapter 4 (commencing with Section
7 11700) of Division 5.

8 (d) Hear and decide, within the limitations and in accordance
9 with the procedure provided, a protest presented by a franchisee
10 pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072,
11 3074, 3075, or 3076. A member of the board who is a new motor
12 vehicle dealer may not participate in, hear, comment, advise other
13 members upon, or decide, any matter involving a protest filed
14 pursuant to Article 4 (commencing with Section 3060), unless all
15 parties to the protest stipulate otherwise.

16 (e) Notwithstanding subdivisions (c) and (d), the courts have
17 jurisdiction over all common law and statutory claims originally
18 cognizable in the courts. For those claims, a party may initiate an
19 action directly in any court of competent jurisdiction.

20 SEC. 6. Section 3050.7 of the Vehicle Code is amended to
21 read:

22 3050.7. (a) The board may adopt stipulated decisions and
23 orders, without a hearing pursuant to Section 3066, to resolve one
24 or more issues raised by a protest or petition filed with the board.
25 Whenever the parties to a protest or petition submit a proposed
26 stipulated decision and order of the board, a copy of the proposed
27 stipulated decision and order shall be transmitted by the executive
28 director of the board to each member of the board. The proposed
29 stipulated decision and order shall be deemed to be adopted by the
30 board unless a member of the board notifies the executive director
31 of the board of an objection thereto within 10 days after that board
32 member has received a copy of the proposed stipulated decision
33 and order.

34 (b) If the board adopts a stipulated decision and order to resolve
35 a protest filed pursuant to Section 3060 or 3070 in which the parties
36 stipulate that good cause exists for the termination of the franchise
37 of the protestant, and the order provides for a conditional or
38 unconditional termination of the franchise of the protestant,
39 paragraph (2) of subdivision (a) of Section 3060 and paragraph
40 (2) of subdivision (a) of Section 3070, which require a hearing to

1 determine whether good cause exists for termination of the
2 franchise, is inapplicable to the proceedings. If the stipulated
3 decision and order provides for an unconditional termination of
4 the franchise, the franchise may be terminated without further
5 proceedings by the board. If the stipulated decision and order
6 provides for the termination of the franchise, conditioned upon the
7 failure of a party to comply with specified conditions, the franchise
8 may be terminated upon a determination, according to the terms
9 of the stipulated decision and order, that the conditions have not
10 been met. If the stipulated decision and order provides for the
11 termination of the franchise conditioned upon the occurrence of
12 specified conditions, the franchise may be terminated upon a
13 determination, according to the terms of the stipulated decision
14 and order, that the stipulated conditions have occurred.

15 SEC. 7. Section 3052 of the Vehicle Code is amended to read:

16 3052. (a) On or before the 10th day after the last day on which
17 reconsideration of a final decision of the department can be ordered,
18 the applicant or licensee may file an appeal with the executive
19 director of the board. The appeal shall be in writing and shall state
20 the grounds therefor. A copy of the appeal shall be mailed by the
21 appellant to the department, and the department shall thereafter
22 be considered as a party to the appeal. The right to appeal is not
23 affected by failure to seek reconsideration before the department.

24 (b) An appeal is considered to be filed on the date it is received
25 in the office of the executive director of the board, except that an
26 appeal mailed to the executive director by means of registered mail
27 is considered to be filed with the executive director on the postmark
28 date.

29 (c) The appeal shall be accompanied by evidence that the
30 appellant has requested the administrative record of the department
31 and advanced the cost of preparation of that record. The complete
32 administrative record includes the pleadings, all notices and orders
33 issued by the department, any proposed decision by an
34 administrative law judge, the exhibits admitted or rejected, the
35 written evidence, and any other papers in the case. All parts of the
36 administrative record requested by the appellant may be filed with
37 the appeal together with the appellant's points and authorities. If
38 the board orders the filing of additional parts of the administrative
39 record, the board may order prior payment by the appellant of the
40 cost of providing those additional parts.

1 (d) Except as provided in subdivisions (e) and (f), a decision of
2 the department may not become effective during the period in
3 which an appeal may be filed, and the filing of an appeal shall stay
4 the decision of the department until a final order is made by the
5 board.

6 (e) When a decision has ordered revocation of a dealer's license,
7 the department may, on or before the last day upon which an appeal
8 may be filed with the board, petition the board to order the decision
9 of the department into effect.

10 (f) With respect to the department's petition filed pursuant to
11 subdivision (e), the department shall have the burden of proof. The
12 board shall act upon the petition within 14 days or prior to the
13 effective date of the department's decision, whichever is later. The
14 board may order oral argument on the petition before the board.

15 SEC. 8. Section 3056 of the Vehicle Code is amended to read:

16 3056. When the order reverses the decision of the department,
17 the board may direct the department to reconsider the matter in
18 the light of its order and may direct the department to take any
19 further action as is specially enjoined upon it by law. In all cases
20 the board shall enter its order within 60 days after the filing of the
21 appeal, except in the case of unavoidable delay in supplying the
22 administrative record, in which event the board shall make its final
23 order within 60 days after receipt of the record.

24 SEC. 9. Section 3057 of the Vehicle Code is amended to read:

25 3057. The board shall fix an effective date for its orders not
26 more than 30 days from the day the order is served upon the parties
27 or remand the case to the department for fixing an effective date.
28 A final order of the board shall be in writing and copies of the
29 order shall be delivered to the parties personally or sent to them
30 by registered mail. The order shall be final upon its delivery or
31 mailing and no reconsideration or rehearing by the board shall be
32 permitted.

33 SEC. 10. Section 3062 of the Vehicle Code is amended to read:

34 3062. (a) (1) Except as otherwise provided in subdivision (b),
35 if a franchisor seeks to enter into a franchise establishing an
36 additional motor vehicle dealership, or seeks to relocate an existing
37 motor vehicle dealership, that has a relevant market area within
38 which the same line-make is represented, the franchisor shall, in
39 writing, first notify the board and each franchisee in that line-make
40 in the relevant market area of the franchisor's intention to establish

1 an additional dealership or to relocate an existing dealership.
2 Within 20 days of receiving the notice, satisfying the requirements
3 of this section, or within 20 days after the end of an appeal
4 procedure provided by the franchisor, a franchisee required to be
5 given the notice may file with the board a protest to the proposed
6 dealership establishment or relocation described in the franchisor's
7 notice. If, within this time, a franchisee files with the board a
8 request for additional time to file a protest, the board or its
9 executive director, upon a showing of good cause, may grant an
10 additional 10 days to file the protest. When a protest is filed, the
11 board shall inform the franchisor that a timely protest has been
12 filed, that a hearing is required pursuant to Section 3066, and that
13 the franchisor may not establish the proposed dealership or relocate
14 the existing dealership until the board has held a hearing as
15 provided in Section 3066, nor thereafter, if the board has
16 determined that there is good cause for not permitting the
17 establishment of the proposed dealership or relocation of the
18 existing dealership. In the event of multiple protests, hearings may
19 be consolidated to expedite the disposition of the issue.

20 (2) If a franchisor seeks to enter into a franchise that authorizes
21 a satellite warranty facility to be established at, or relocated to, a
22 proposed location that is within two miles of a dealership of the
23 same line-make, the franchisor shall first give notice in writing of
24 the franchisor's intention to establish or relocate a satellite warranty
25 facility at the proposed location to the board and each franchisee
26 operating a dealership of the same line-make within two miles of
27 the proposed location. Within 20 days of receiving the notice
28 satisfying the requirements of this section, or within 20 days after
29 the end of an appeal procedure provided by the franchisor, a
30 franchisee required to be given the notice may file with the board
31 a protest to the establishing or relocating of the satellite warranty
32 facility. If, within this time, a franchisee files with the board a
33 request for additional time to file a protest, the board or its
34 executive director, upon a showing of good cause, may grant an
35 additional 10 days to file the protest. When a protest is filed, the
36 board shall inform the franchisor that a timely protest has been
37 filed, that a hearing is required pursuant to Section 3066, and that
38 the franchisor may not establish or relocate the proposed satellite
39 warranty facility until the board has held a hearing as provided in
40 Section 3066, nor thereafter, if the board has determined that there

1 is good cause for not permitting the satellite warranty facility. In
2 the event of multiple protests, hearings may be consolidated to
3 expedite the disposition of the issue.

4 (3) The written notice shall contain, on the first page thereof in
5 at least 12-point bold type and circumscribed by a line to segregate
6 it from the rest of the text, the following statement:

7
8 “NOTICE TO DEALER: You have the right to file a protest
9 with the NEW MOTOR VEHICLE BOARD in Sacramento and
10 have a hearing on your protest under the terms of the California
11 Vehicle Code if you oppose this action. You must file your protest
12 with the board within 20 days of your receipt of this notice, or
13 within 20 days after the end of any appeal procedure that is
14 provided by us to you. If within this time you file with the board
15 a request for additional time to file a protest, the board or its
16 executive director, upon a showing of good cause, may grant you
17 an additional 10 days to file the protest.”

18
19 (b) Subdivision (a) does not apply to either of the following:

20 (1) The relocation of an existing dealership to a location that is
21 both within the same city as, and within one mile from, the existing
22 dealership location.

23 (2) The establishment at a location that is both within the same
24 city as, and within one-quarter mile from, the location of a
25 dealership of the same line-make that has been out of operation
26 for less than 90 days.

27 (c) Subdivision (a) does not apply to a display of vehicles at a
28 fair, exposition, or similar exhibit if actual sales are not made at
29 the event and the display does not exceed 30 days. This subdivision
30 may not be construed to prohibit a new vehicle dealer from
31 establishing a branch office for the purpose of selling vehicles at
32 the fair, exposition, or similar exhibit, even though the event is
33 sponsored by a financial institution, as defined in Section 31041
34 of the Financial Code or by a financial institution and a licensed
35 dealer. The establishment of these branch offices, however, shall
36 be in accordance with subdivision (a) where applicable.

37 (d) For the purposes of this section, the reopening of a dealership
38 that has not been in operation for one year or more shall be deemed
39 the establishment of an additional motor vehicle dealership.

40 (e) As used in this section, the following definitions apply:

1 (1) “Motor vehicle dealership” or “dealership” means an
2 authorized facility at which a franchisee offers for sale or lease,
3 displays for sale or lease, or sells or leases new motor vehicles.

4 (2) “Satellite warranty facility” means a facility operated by a
5 franchisee where authorized warranty repairs and service are
6 performed and the offer for sale or lease, the display for sale or
7 lease, or the sale or lease of new motor vehicles is not authorized
8 to take place.

9 SEC. 11. Section 3063 of the Vehicle Code is amended to read:

10 3063. In determining whether good cause has been established
11 for not entering into a franchise or relocating an existing dealership
12 of the same line-make, the board shall take into consideration the
13 existing circumstances, including, but not limited to, all of the
14 following:

15 (a) Permanency of the investment.

16 (b) Effect on the retail motor vehicle business and the consuming
17 public in the relevant market area.

18 (c) Whether it is injurious to the public welfare for an additional
19 franchise to be established or an existing dealership to be relocated.

20 (d) Whether the franchisees of the same line-make in the relevant
21 market area are providing adequate competition and convenient
22 consumer care for the motor vehicles of the line-make in the market
23 area, which shall include the adequacy of motor vehicle sales and
24 service facilities, equipment, supply of vehicle parts, and qualified
25 service personnel.

26 (e) Whether the establishment of an additional franchise would
27 increase competition and therefore be in the public interest.

28 (f) For purposes of this section, the terms “motor vehicle
29 dealership” and “dealership” shall have the same meaning as
30 defined in Section 3062.

31 SEC. 12. Section 3064 of the Vehicle Code is amended to read:

32 3064. (a) Every franchisor shall specify to its franchisees the
33 delivery and preparation obligations of the franchisees prior to
34 delivery of new motor vehicles to retail buyers. A copy of the
35 delivery and preparation obligations, which shall constitute the
36 franchisee’s only responsibility for product liability between the
37 franchisee and the franchisor but shall not in any way affect the
38 franchisee’s responsibility for product liability between the
39 purchaser and either the franchisee or the franchisor, and a schedule
40 of compensation to be paid to franchisees for the work and services

1 they shall be required to perform in connection with those delivery
2 and preparation obligations shall be filed with the board by
3 franchisors, and shall constitute the compensation as set forth on
4 the schedule. The schedule of compensation shall be reasonable,
5 with the reasonableness thereof being subject to the approval of
6 the board, if a franchisee files a notice of protest with the board.
7 In determining the reasonableness of the schedules, the board shall
8 consider all relevant circumstances, including, but not limited to,
9 the time required to perform each function that the dealer is
10 obligated to perform and the appropriate labor rate.

11 (b) Upon delivery of the vehicle, the franchisee shall give a
12 copy of the delivery and preparation obligations to the purchaser
13 and a written certification that the franchisee has fulfilled these
14 obligations.

15 SEC. 13. Section 3065 of the Vehicle Code is amended to read:

16 3065. (a) Every franchisor shall properly fulfill every warranty
17 agreement made by it and adequately and fairly compensate each
18 of its franchisees for labor and parts used to fulfill that warranty
19 when the franchisee has fulfilled warranty obligations of
20 diagnostics, repair, and servicing and shall file a copy of its
21 warranty reimbursement schedule or formula with the board. The
22 warranty reimbursement schedule or formula shall be reasonable
23 with respect to the time and compensation allowed to the franchisee
24 for the warranty diagnostics, repair, and servicing, and all other
25 conditions of the obligation. ~~If the warranty reimbursement~~
26 ~~schedule or formula provides compensation for franchisee labor~~
27 ~~on a flat-rate basis, the franchisor shall allow the franchisee to use~~
28 ~~a published, nationally recognized, flat-rate labor time guide as~~
29 ~~the basis for determining the amount of time allocable for warranty~~
30 ~~repairs if the franchisee primarily uses the time guide to compute~~
31 ~~technician flat-rate compensation and charges for nonwarranty~~
32 ~~labor.~~ The reasonableness of the warranty reimbursement schedule
33 or formula shall be determined by the board if a franchisee files a
34 protest with the board. *A franchisor shall not replace, modify, or*
35 *supplement the warranty reimbursement schedule to impose a*
36 *fixed percentage or other general reduction in the time and*
37 *compensation allowed to the franchisee for labor or parts. A*
38 *franchisor may reduce the allowed time and compensation*
39 *applicable to specific parts or labor operations only upon 30 days'*
40 *prior written notice to the franchisee. In any protest challenging*

1 *a reduction in time and compensation applicable to specific parts*
2 *or labor operations that is filed within one year following the*
3 *franchisee's receipt of notice of the reduction, the franchisor shall*
4 *have the burden of establishing the reasonableness of the reduction*
5 *and adequacy and fairness of the resulting compensation.*

6 (b) In determining the adequacy and fairness of the
7 compensation, *published, nationally recognized flat-rate time*
8 *guides and the franchisee's effective labor rate charged to its*
9 *various retail customers may be considered together with other*
10 *relevant criteria. If in a protest permitted by this section filed by*
11 *any franchisee the board determines that the warranty*
12 *reimbursement schedule or formula fails in any manner to provide*
13 *adequate and fair compensation or fails in whole or in part to*
14 *conform with the other requirements of this section, within 30 days*
15 *after receipt of the board's order the franchisor shall correct the*
16 *failure by amending or replacing the warranty reimbursement*
17 *schedule or formula and implementing the correction as to all*
18 *franchisees of the franchisor.*

19 (c) If any franchisor disallows a franchisee's claim for a
20 defective part, alleging that the part, in fact, is not defective, the
21 franchisor shall return the part alleged not to be defective to the
22 franchisee at the expense of the franchisor, or the franchisee shall
23 be reimbursed for the franchisee's cost of the part, at the
24 franchisor's option.

25 (d) (1) All claims made by franchisees pursuant to this section
26 shall be either approved or disapproved within 30 days after their
27 receipt by the franchisor. Any claim not specifically disapproved
28 in writing within 30 days from receipt by the franchisor shall be
29 deemed approved on the 30th day. All claims made by franchisees
30 under this section and Section 3064 for labor and parts shall be
31 paid within 30 days after approval.

32 (2) A franchisor shall not disapprove a claim unless the claim
33 is false or fraudulent, repairs were not properly made, repairs were
34 inappropriate to correct a nonconformity with the written warranty
35 due to an improper act or omission of the franchisee, or for material
36 noncompliance with reasonable and nondiscriminatory
37 documentation and administrative claims submission requirements.
38 A franchisor shall not disapprove a claim based upon an
39 extrapolation from a sample of claims.

(3) When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisee shall have 30 days from the date of receipt of the notice to cure the noncompliance. If the disapproval is rebutted, or any noncompliance is reasonably cured within that 30-day period, the franchisor shall approve the claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise invokes the appeal process described in paragraph (3), and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial, which shall contain the following statement on the first page, in at least 12-point boldface type and circumscribed by a line to segregate it from the rest of the text:

“NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF YOUR WARRANTY CLAIM, OR OTHERWISE APPEAL DENIAL OF YOUR WARRANTY CLAIM.

~~You~~ *“You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest this denial under the provisions of the California Vehicle Code. You must file your protest with the board within six months after receiving this notice.”*

(5) Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(6) Within six months after either receipt of the written notice described in paragraph (3) or ~~paragraph~~ (4), whichever is later, a

1 franchisee may file a protest with the board for determination of
2 whether the franchisor complied with the requirements of this
3 subdivision. In any protest pursuant to this subdivision, the
4 franchisor shall have the burden of proof.

5 (e) (1) Audits of franchisee warranty records may be conducted
6 by the franchisor on a reasonable basis for a period of nine months
7 after a claim is paid or credit issued, and only if the franchisor has
8 substantial evidence of a pattern of improper warranty claims,
9 including, but not limited to, a recent significant deviation between
10 the value or number of warranty claims made by the franchisee
11 and the average value or number of warranty claims made by
12 similarly sized dealers of the same line-make.

13 (2) Previously approved claims shall not be disapproved or
14 charged back to the franchisee unless the claim is false or
15 fraudulent, repairs were not properly made, repairs were
16 inappropriate to correct a nonconformity with the written warranty
17 due to an improper act or omission of the franchisee, or for material
18 noncompliance with reasonable and nondiscriminatory
19 documentation and administrative claims submission requirements.
20 A franchisor shall not disapprove or chargeback a claim based
21 upon an extrapolation from a sample of claims.

22 (3) If the franchisor disapproves of a previously approved claim
23 following an audit, the franchisor shall provide to the franchisee,
24 within 30 days after the audit, a written disapproval notice stating
25 the specific grounds upon which the claim is disapproved. The
26 franchisor shall provide a reasonable appeal process allowing the
27 franchisee a reasonable period of not less than 30 days after receipt
28 of the written disapproval notice to respond to any disapproval
29 with additional supporting documentation or information rebutting
30 the disapproval, with the period to be commensurate with the
31 volume of claims under consideration. If the franchisee rebuts any
32 disapproval or reasonably cures any noncompliance relating to a
33 claim, the franchisor shall not chargeback the franchisee for that
34 claim.

35 (4) If the franchisee provides additional supporting
36 documentation or information purporting to rebut the disapproval
37 or attempts to cure noncompliance relating to the claim and the
38 franchisor continues to deny the claim, the franchisor shall provide
39 the franchisee with a written notification of the final denial, which
40 shall contain the following statement on the first page, in at least

1 12-point boldface type and circumscribed by a line to segregate it
2 from the rest of the text:

3
4 “NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT
5 TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF
6 YOUR WARRANTY CLAIM, OR OTHERWISE APPEAL
7 DENIAL OF YOUR WARRANTY CLAIM.
8

9 “You have the right to file a protest with the NEW MOTOR
10 VEHICLE BOARD in Sacramento and have a hearing in which
11 you may protest this denial under the provisions of the California
12 Vehicle Code. You must file your protest with the board within
13 six months after receiving this notice.
14

15 “WE WILL CHARGE YOU FOR THE DENIED CLAIMS
16 WITHIN 45 TO 90 DAYS OF THIS NOTICE UNLESS YOU
17 FILE A PROTEST WITH THE BOARD PRIOR TO
18 CHARGEBACK.”
19

20 (5) The franchisor shall not chargeback the franchisee until 45
21 days after receipt of the written notice described in paragraph (3)
22 or paragraph (4), whichever is later. Any chargeback to a franchisee
23 for warranty parts or service compensation shall be made within
24 90 days of receipt of that written notice. If the franchisee files a
25 protest pursuant to this subdivision prior to the franchisor’s
26 chargeback for denied claims, the franchisor shall not offset or
27 otherwise undertake to collect the chargeback until the board issues
28 a final order on the protest. If the board sustains the chargeback
29 or the protest is dismissed with prejudice, the franchisor shall have
30 90 days following issuance of the final order or the dismissal with
31 prejudice to make the chargeback, unless otherwise provided in a
32 settlement agreement.

33 (6) Within six months after either receipt of the written
34 disapproval notice or completion of the franchisor’s appeal process,
35 whichever is later, a franchisee may file a protest with the board
36 for determination of whether the franchisor complied with this
37 subdivision. If a false claim was submitted by a franchisee with
38 intent to defraud the franchisor, a longer period for audit and any
39 resulting chargeback may be permitted if the franchisor obtains

1 an order from the board. In any protest pursuant to this subdivision,
2 the franchisor shall have the burden of proof.

3 SEC. 14. Section 3065.1 of the Vehicle Code is amended to
4 read:

5 3065.1. (a) All claims made by a franchisee for payment under
6 the terms of a franchisor incentive program shall be either approved
7 or disapproved within 30 days after receipt by the franchisor. When
8 any claim is disapproved, the franchisee who submits it shall be
9 notified in writing of its disapproval within the required period,
10 and each notice shall state the specific grounds upon which the
11 disapproval is based. Any claim not specifically disapproved in
12 writing within 30 days from receipt shall be deemed approved on
13 the 30th day.

14 (b) Franchisee claims for incentive program compensation shall
15 not be disapproved unless the claim is false or fraudulent, the claim
16 is ineligible under the terms of the incentive program as previously
17 communicated to the franchisee, or for material noncompliance
18 with reasonable and nondiscriminatory documentation and
19 administrative claims submission requirements. A franchisor shall
20 not disapprove a claim based upon an extrapolation from a sample
21 of claims.

22 (c) The franchisor shall provide for a reasonable appeal process
23 allowing the franchisee at least 30 days after receipt of the written
24 disapproval notice to respond to any disapproval with additional
25 supporting documentation or information rebutting the disapproval.
26 If disapproval is based upon noncompliance with documentation
27 or administrative claims submission requirements, the franchisee
28 shall have 30 days from the date of receipt of the written
29 disapproval notice to cure the noncompliance. If the disapproval
30 is rebutted, or any noncompliance is reasonably cured within that
31 30-day period, the franchisor shall approve the claim.

32 (d) If the franchisee provides additional supporting
33 documentation or information purporting to rebut the disapproval
34 or attempts to cure noncompliance relating to the claim and the
35 franchisor continues to deny the claim, the franchisor shall provide
36 the franchisee with a written notification of the final denial, which
37 shall contain the following statement on the first page, in at least
38 12-point boldface type and circumscribed by a line to segregate it
39 from the rest of the text:

40

1 “NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT
2 TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF
3 YOUR FRANCHISE INCENTIVE PROGRAM CLAIM, OR
4 OTHERWISE APPEAL DENIAL OF YOUR CLAIM.
5

6 ~~You~~ “*You* have the right to file a protest with the NEW MOTOR
7 VEHICLE BOARD in Sacramento and have a hearing in which
8 you may protest this denial under the provisions of the California
9 Vehicle Code. You must file your protest with the board within
10 six months after receiving this notice.”
11

12 (e) Following the disapproval of a claim, a franchisee shall have
13 six months from either receipt of the written notice described in
14 subdivision (a) or (d), whichever is later, to file a protest with the
15 board for determination of whether the franchisor complied with
16 this subdivision. In any hearing pursuant to this subdivision, the
17 franchisor shall have the burden of proof.

18 (f) All claims made by franchisees under this section shall be
19 paid within 30 days following approval. Failure to approve or pay
20 within the above specified time limits, in individual instances for
21 reasons beyond the reasonable control of the franchisor, do not
22 constitute a violation of this article.

23 (g) (1) Audits of franchisee incentive records may be conducted
24 by the franchisor on a reasonable basis, and for a period of nine
25 months after a claim is paid or credit issued.

26 (2) Previously approved claims shall not be disapproved and
27 charged back unless the claim is false or fraudulent, the claim is
28 ineligible under the terms of the incentive program as previously
29 communicated to the franchisee, or for material noncompliance
30 with reasonable and nondiscriminatory documentation and
31 administrative claims submission requirements. A franchisor shall
32 not disapprove a claim or chargeback a claim based upon an
33 extrapolation from a sample of claims.

34 (3) If the franchisor disapproves of a previously approved claim
35 following an audit, the franchisor shall provide to the franchisee,
36 within 30 days after the audit, a written disapproval notice stating
37 the specific grounds upon which the claim is disapproved. The
38 franchisor shall provide a reasonable appeal process allowing the
39 franchisee a reasonable period of not less than 30 days after receipt
40 of the written disapproval notice to respond to any chargeback

1 with additional supporting documentation or information rebutting
2 the disapproval, with the period to be commensurate with the
3 volume of claims under consideration.

4 (4) If the franchisee provides additional supporting
5 documentation or information purporting to rebut the disapproval,
6 attempts to cure noncompliance relating to the claim, or otherwise
7 appeals denial of the claim, and the franchisor continues to deny
8 the claim, the franchisor shall provide the franchisee with a written
9 notification of the final denial, which shall contain the following
10 statement on the first page, in at least 12-point boldface type and
11 circumscribed by a line to segregate it from the rest of the text:
12

13 “NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT
14 TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF
15 YOUR FRANCHISOR INCENTIVE PROGRAM CLAIM, OR
16 OTHERWISE APPEAL DENIAL OF YOUR CLAIM.
17

18 “You have the right to file a protest with the NEW MOTOR
19 VEHICLE BOARD in Sacramento and have a hearing in which
20 you may protest this denial under the provisions of the California
21 Vehicle Code. You must file your protest with the board within
22 six months after receiving this notice.
23

24 “WE WILL CHARGE YOU FOR THE DENIED CLAIMS
25 WITHIN 45 TO 90 DAYS OF THIS NOTICE UNLESS YOU
26 FILE A PROTEST WITH THE BOARD PRIOR TO
27 CHARGEBACK.”
28

29 (5) The franchisor shall not chargeback the franchisee until 45
30 days after the franchisee receives the written notice described in
31 paragraph (3) or (4), whichever is later. If the franchisee reasonably
32 cures any noncompliance relating to a claim, the franchisor shall
33 not chargeback the dealer for that claim. Any chargeback to a
34 franchisee for incentive program compensation shall be made
35 within 90 days after the franchisee receives that written notice. If
36 the board sustains the chargeback or the protest is dismissed with
37 prejudice, the franchisor shall have 90 days following issuance of
38 the final order or the dismissal with prejudice to make the
39 chargeback, unless otherwise provided in a settlement agreement.

(6) Within six months after either receipt of the written notice described in paragraph (3) or ~~paragraph (4)~~, a franchisee may file a protest with the board for determination of whether the franchisor complied with this subdivision. If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board. If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the board issues a final order on the protest. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

SEC. 15. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, the board shall fix a time within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in a case involving a franchisee who deals exclusively in motorcycles, the board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing may not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3060, 3062, 3070, or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the

1 burden of proof to establish that there is good cause not to enter
2 into a franchise establishing or relocating an additional motor
3 vehicle dealership.

4 (c) In a hearing on a protest alleging a violation of, or filed
5 pursuant to, Section 3064, 3065, 3065.1, 3074, 3075, or 3076, the
6 franchisee shall have the burden of proof, but the franchisor has
7 the burden of proof to establish that a franchisee acted with intent
8 to defraud the franchisor where that issue is material to a protest
9 filed pursuant to Section 3065, 3065.1, 3075, or 3076.

10 (d) A member of the board who is a new motor vehicle dealer
11 may not participate in, hear, comment, or advise other members
12 upon, or decide, a matter involving a protest filed pursuant to this
13 article unless all parties to the protest stipulate otherwise.

14 SEC. 16. Section 3067 of the Vehicle Code is amended to read:

15 3067. (a) The decision of the board shall be in writing and
16 shall contain findings of fact and a determination of the issues
17 presented. The decision shall sustain, conditionally sustain,
18 overrule, or conditionally overrule the protest. Conditions imposed
19 by the board shall be for the purpose of assuring performance of
20 binding contractual agreements between franchisees and franchisors
21 or otherwise serving the purposes of this article or Article 5
22 (commencing with Section 3070). If the board fails to act within
23 30 days after the hearing, within 30 days after the board receives
24 a proposed decision where the case is heard before an
25 administrative law judge alone, or within a period necessitated by
26 Section 11517 of the Government Code, or as may be mutually
27 agreed upon by the parties, then the proposed action shall be
28 deemed to be approved. Copies of the board's decision shall be
29 delivered to the parties personally or sent to them by registered
30 mail, as well as to all individuals and groups that have requested
31 notification by the board of protests and decisions by the board.
32 The board's decision shall be final upon its delivery or mailing
33 and a reconsideration or rehearing is not permitted.

34 (b) Notwithstanding subdivision (c) of Section 11517 of the
35 Government Code, if a protest is heard by an administrative law
36 judge alone, 10 days after receipt by the board of the administrative
37 law judge's proposed decision, a copy of the proposed decision
38 shall be filed by the board as a public record and a copy shall be
39 served by the board on each party and his or her attorney.

1 SEC. 17. Section 3069.1 of the Vehicle Code is amended to
2 read:

3 3069.1. Sections 3060 to 3065.1, inclusive, do not apply to a
4 franchise authorizing a dealership, as defined in subdivision (d)
5 of Section 3072.

6 SEC. 18. Section 11713.3 of the Vehicle Code is amended to
7 read:

8 11713.3. It is unlawful and a violation of this code for a
9 manufacturer, manufacturer branch, distributor, or distributor
10 branch licensed pursuant to this code to do, directly or indirectly
11 through an affiliate, any of the following:

12 (a) To refuse or fail to deliver in reasonable quantities and within
13 a reasonable time after receipt of an order from a dealer having a
14 franchise for the retail sale of a new vehicle sold or distributed by
15 the manufacturer or distributor, a new vehicle or parts or
16 accessories to new vehicles as are covered by the franchise, if the
17 vehicle, parts, or accessories are publicly advertised as being
18 available for delivery or actually being delivered. This subdivision
19 is not violated, however, if the failure is caused by acts or causes
20 beyond the control of the manufacturer, manufacturer branch,
21 distributor, or distributor branch.

22 (b) To prevent or require, or attempt to prevent or require, by
23 contract or otherwise, a change in the capital structure of a
24 dealership or the means by or through which the dealer finances
25 the operation of the dealership, if the dealer at all times meets
26 reasonable capital standards agreed to by the dealer and the
27 manufacturer or distributor, and if a change in capital structure
28 does not cause a change in the principal management or have the
29 effect of a sale of the franchise without the consent of the
30 manufacturer or distributor.

31 (c) To prevent or require, or attempt to prevent or require, a
32 dealer to change the executive management of a dealership, other
33 than the principal dealership operator or operators, if the franchise
34 was granted to the dealer in reliance upon the personal
35 qualifications of that person.

36 (d) (1) Except as provided in subdivision (t), to prevent or
37 require, or attempt to prevent or require, by contract or otherwise,
38 a dealer, or an officer, partner, or stockholder of a dealership, the
39 sale or transfer of a part of the interest of any of them to another
40 person. A dealer, officer, partner, or stockholder shall not, however,

1 have the right to sell, transfer, or assign the franchise, or a right
2 thereunder, without the consent of the manufacturer or distributor
3 except that the consent shall not be unreasonably withheld.

4 (2) (A) For the transferring franchisee to fail, prior to the sale,
5 transfer, or assignment of a franchisee or the sale, assignment, or
6 transfer of all, or substantially all, of the assets of the franchised
7 business or a controlling interest in the franchised business to
8 another person, to notify the manufacturer or distributor of the
9 franchisee's decision to sell, transfer, or assign the franchise. The
10 notice shall be in writing and shall include all of the following:

11 (i) The proposed transferee's name and address.

12 (ii) A copy of all of the agreements relating to the sale,
13 assignment, or transfer of the franchised business or its assets.

14 (iii) The proposed transferee's application for approval to
15 become the successor franchisee. The application shall include
16 forms and related information generally utilized by the
17 manufacturer or distributor in reviewing prospective franchisees,
18 if those forms are readily made available to existing franchisees.
19 As soon as practicable after receipt of the proposed transferee's
20 application, the manufacturer or distributor shall notify the
21 franchisee and the proposed transferee of information needed to
22 make the application complete.

23 (B) For the manufacturer or distributor, to fail, on or before 60
24 days after the receipt of all of the information required pursuant
25 to subparagraph (A), or as extended by a written agreement
26 between the manufacturer or distributor and the franchisee, to
27 notify the franchisee of the approval or the disapproval of the sale,
28 transfer, or assignment of the franchise. The notice shall be in
29 writing and shall be personally served or sent by certified mail,
30 return receipt requested, or by guaranteed overnight delivery
31 service that provides verification of delivery and shall be directed
32 to the franchisee. A proposed sale, assignment, or transfer shall
33 be deemed approved, unless disapproved by the franchisor in the
34 manner provided by this subdivision. If the proposed sale,
35 assignment, or transfer is disapproved, the franchisor shall include
36 in the notice of disapproval a statement setting forth the reasons
37 for the disapproval.

38 (3) In an action in which the manufacturer's or distributor's
39 withholding of consent under this subdivision or subdivision (e)
40 is an issue, whether the withholding of consent was unreasonable

1 is a question of fact requiring consideration of all the existing
2 circumstances.

3 (e) To prevent, or attempt to prevent, a dealer from receiving
4 fair and reasonable compensation for the value of the franchised
5 business. There shall not be a transfer or assignment of the dealer's
6 franchise without the consent of the manufacturer or distributor,
7 which consent shall not be unreasonably withheld or conditioned
8 upon the release, assignment, novation, waiver, estoppel, or
9 modification of a claim or defense by the dealer.

10 (f) To obtain money, goods, services, or another benefit from
11 a person with whom the dealer does business, on account of, or in
12 relation to, the transaction between the dealer and that other person,
13 other than for compensation for services rendered, unless the
14 benefit is promptly accounted for, and transmitted to, the dealer.

15 (g) (1) Except as provided in paragraph (3), to obtain from a
16 dealer or enforce against a dealer an agreement, provision, release,
17 assignment, novation, waiver, or estoppel that does any of the
18 following:

19 (A) Modifies or disclaims a duty or obligation of a manufacturer,
20 manufacturer branch, distributor, distributor branch, or
21 representative, or a right or privilege of a dealer, pursuant to
22 Chapter 4 (commencing with Section 11700) of Division 5 or
23 Chapter 6 (commencing with Section 3000) of Division 2.

24 (B) Limits or constrains the right of a dealer to file, pursue, or
25 submit evidence in connection with a protest before the board.

26 (C) Requires a dealer to terminate a franchise.

27 (D) Requires a controversy between a manufacturer,
28 manufacturer branch, distributor, distributor branch, or
29 representative and a dealer to be referred to a person for a binding
30 determination. However, this subparagraph does not prohibit
31 arbitration before an independent arbitrator, provided that whenever
32 a motor vehicle franchise contract provides for the use of arbitration
33 to resolve a controversy arising out of, or relating to, that contract,
34 arbitration may be used to settle the controversy only if, after the
35 controversy arises, all parties to the controversy consent in writing
36 to use arbitration to settle the controversy. For the purpose of this
37 subparagraph, the terms "motor vehicle" and "motor vehicle
38 franchise contract" shall have the same meaning as defined in
39 Section 1226 of Title 15 of the United States Code. If arbitration
40 is elected to settle a dispute under a motor vehicle franchise

1 contract, the arbitrator shall provide the parties to the arbitration
2 with a written explanation of the factual and legal basis for the
3 award.

4 (2) An agreement, provision, release, assignment, novation,
5 waiver, or estoppel prohibited by this subdivision shall be
6 unenforceable and void.

7 (3) This subdivision does not do any of the following:

8 (A) Limit or restrict the terms upon which parties to a protest
9 before the board, civil action, or other proceeding can settle or
10 resolve, or stipulate to evidentiary or procedural matters during
11 the course of, a protest, civil action, or other proceeding.

12 (B) Affect the enforceability of any stipulated order or other
13 order entered by the board.

14 (C) Affect the enforceability of any provision in a contract if
15 the provision is not prohibited under this subdivision or any other
16 law.

17 (D) Affect the enforceability of a provision in any contract
18 entered into on or before December 31, 2011.

19 (E) Prohibit a dealer from waiving its right to file a protest
20 pursuant to Section 3065.1 if the waiver agreement is entered into
21 after a franchisor incentive program claim has been disapproved
22 by the franchisor and the waiver is voluntarily given as part of an
23 agreement to settle that claim.

24 (F) Prohibit a voluntary agreement supported by valuable
25 consideration, other than granting or renewing a franchise, that
26 does both of the following:

27 (i) Provides that a dealer establish or maintain exclusive
28 facilities, personnel, or display space or provides that a dealer
29 make a material alteration, expansion, or addition to a dealership
30 facility.

31 (ii) Contains no waiver or other provision prohibited by
32 subparagraph (A), (B), (C), or (D) of paragraph (1).

33 (G) Prohibit an agreement separate from the franchise agreement
34 that implements a dealer's election to terminate the franchise if
35 the agreement is conditioned only on a specified time for
36 termination or payment of consideration to the dealer.

37 (H) (i) Prohibit a voluntary waiver agreement, supported by
38 valuable consideration, other than the consideration of renewing
39 a franchise, to waive the right of a dealer to file a protest under
40 Section 3062 for the proposed establishment or relocation of a

1 specific proposed dealership, if the waiver agreement provides all
2 of the following:

3 (I) The approximate address at which the proposed dealership
4 will be located.

5 (II) The planning potential used to establish the proposed
6 dealership's facility, personnel, and capital requirements.

7 (III) An approximation of projected vehicle and parts sales, and
8 number of vehicles to be serviced at the proposed dealership.

9 (IV) Whether the franchisor or affiliate will hold an ownership
10 interest in the proposed dealership or real property of the proposed
11 dealership, and the approximate percentage of any franchisor or
12 affiliate ownership interest in the proposed dealership.

13 (V) The line-makes to be operated at the proposed dealership.

14 (VI) If known at the time the waiver agreement is executed, the
15 identity of the dealer who will operate the proposed dealership.

16 (VII) The date the waiver agreement is to expire, which may
17 not be more than 30 months after the date of execution of the
18 waiver agreement.

19 (ii) Notwithstanding the provisions of a waiver agreement
20 entered into pursuant to the provisions of this subparagraph, a
21 dealer may file a protest under Section 3062 if any of the
22 information provided pursuant to clause (i) has become materially
23 inaccurate since the waiver agreement was executed. Any
24 determination of the enforceability of a waiver agreement shall be
25 determined by the board and the franchisor shall have the burden
26 of proof.

27 (h) To increase prices of motor vehicles that the dealer had
28 ordered for private retail consumers prior to the dealer's receipt
29 of the written official price increase notification. A sales contract
30 signed by a private retail consumer is evidence of the order. In the
31 event of manufacturer price reductions, the amount of the reduction
32 received by a dealer shall be passed on to the private retail
33 consumer by the dealer if the retail price was negotiated on the
34 basis of the previous higher price to the dealer. Price reductions
35 apply to all vehicles in the dealer's inventory that were subject to
36 the price reduction. Price differences applicable to new model or
37 series motor vehicles at the time of the introduction of new models
38 or series shall not be considered a price increase or price decrease.
39 This subdivision does not apply to price changes caused by either
40 of the following:

1 (1) The addition to a motor vehicle of required or optional
2 equipment pursuant to state or federal law.

3 (2) Revaluation of the United States dollar in the case of a
4 foreign-make vehicle.

5 (i) To fail to pay to a dealer, within a reasonable time following
6 receipt of a valid claim by a dealer thereof, a payment agreed to
7 be made by the manufacturer or distributor to the dealer by reason
8 of the fact that a new vehicle of a prior year model is in the dealer's
9 inventory at the time of introduction of new model vehicles.

10 (j) To deny the widow, widower, or heirs designated by a
11 deceased owner of a dealership the opportunity to participate in
12 the ownership of the dealership or successor dealership under a
13 valid franchise for a reasonable time after the death of the owner.

14 (k) To offer refunds or other types of inducements to a person
15 for the purchase of new motor vehicles of a certain line-make to
16 be sold to the state or a political subdivision of the state without
17 making the same offer to all other dealers in the same line-make
18 within the relevant market area.

19 (l) To modify, replace, enter into, relocate, terminate, or refuse
20 to renew a franchise in violation of Article 4 (commencing with
21 Section 3060) of Chapter 6 of Division 2.

22 (m) To employ a person as a representative who has not been
23 licensed pursuant to Article 3 (commencing with Section 11900)
24 of Chapter 4 of Division 5.

25 (n) To deny a dealer the right of free association with another
26 dealer for a lawful purpose.

27 (o) (1) To compete with a dealer in the same line-make
28 operating under an agreement or franchise from a manufacturer
29 or distributor in the relevant market area.

30 (2) A manufacturer, branch, or distributor or an entity that
31 controls or is controlled by, a manufacturer, branch, or distributor,
32 shall not, however, be deemed to be competing in the following
33 limited circumstances:

34 (A) Owning or operating a dealership for a temporary period,
35 not to exceed one year at the location of a former dealership of the
36 same line-make that has been out of operation for less than six
37 months. However, after a showing of good cause by a
38 manufacturer, branch, or distributor that it needs additional time
39 to operate a dealership in preparation for sale to a successor
40 independent franchisee, the board may extend the time period.

1 (B) Owning an interest in a dealer as part of a bona fide dealer
2 development program that satisfies all of the following
3 requirements:

4 (i) The sole purpose of the program is to make franchises
5 available to persons lacking capital, training, business experience,
6 or other qualities ordinarily required of prospective franchisees
7 and the dealer development candidate is an individual who is
8 unable to acquire the franchise without assistance of the program.

9 (ii) The dealer development candidate has made a significant
10 investment subject to loss in the franchised business of the dealer.

11 (iii) The program requires the dealer development candidate to
12 manage the day-to-day operations and business affairs of the dealer
13 and to acquire, within a reasonable time and on reasonable terms
14 and conditions, beneficial ownership and control of a majority
15 interest in the dealer and disassociation of any direct or indirect
16 ownership or control by the manufacturer, branch, or distributor.

17 (C) Owning a wholly owned subsidiary corporation of a
18 distributor that sells motor vehicles at retail, if, for at least three
19 years prior to January 1, 1973, the subsidiary corporation has been
20 a wholly owned subsidiary of the distributor and engaged in the
21 sale of vehicles at retail.

22 (3) (A) A manufacturer, branch, and distributor that owns or
23 operates a dealership in the manner described in subparagraph (A)
24 of paragraph (2) shall give written notice to the board, within 10
25 days, each time it commences or terminates operation of a
26 dealership and each time it acquires, changes, or divests itself of
27 an ownership interest.

28 (B) A manufacturer, branch, and distributor that owns an interest
29 in a dealer in the manner described in subparagraph (B) of
30 paragraph (2) shall give written notice to the board, annually, of
31 the name and location of each dealer in which it has an ownership
32 interest, the name of the bona fide dealer development owner or
33 owners, and the ownership interests of each owner expressed as a
34 percentage.

35 (p) To unfairly discriminate among its franchisees with respect
36 to warranty reimbursement or authority granted to its franchisees
37 to make warranty adjustments with retail customers.

38 (q) To sell vehicles to a person not licensed pursuant to this
39 chapter for resale.

1 (r) To fail to affix an identification number to a park trailer, as
2 described in Section 18009.3 of the Health and Safety Code, that
3 is manufactured on or after January 1, 1987, and that does not
4 clearly identify the unit as a park trailer to the department. The
5 configuration of the identification number shall be approved by
6 the department.

7 (s) To dishonor a warranty, rebate, or other incentive offered
8 to the public or a dealer in connection with the retail sale of a new
9 motor vehicle, based solely upon the fact that an autobroker
10 arranged or negotiated the sale. This subdivision shall not prohibit
11 the disallowance of that rebate or incentive if the purchaser or
12 dealer is ineligible to receive the rebate or incentive pursuant to
13 any other term or condition of a rebate or incentive program.

14 (t) To exercise a right of first refusal or other right requiring a
15 franchisee or an owner of the franchise to sell, transfer, or assign
16 to the franchisor, or to a nominee of the franchisor, all or a material
17 part of the franchised business or of the assets of the franchised
18 business unless all of the following requirements are met:

19 (1) The franchise authorizes the franchisor to exercise a right
20 of first refusal to acquire the franchised business or assets of the
21 franchised business in the event of a proposed sale, transfer, or
22 assignment.

23 (2) The franchisor gives written notice of its exercise of the
24 right of first refusal no later than 45 days after the franchisor
25 receives all of the information required pursuant to subparagraph
26 (A) of paragraph (2) of subdivision (d).

27 (3) The sale, transfer, or assignment being proposed relates to
28 not less than all or substantially all of the assets of the franchised
29 business or to a controlling interest in the franchised business.

30 (4) The proposed transferee is neither a family member of an
31 owner of the franchised business, nor a managerial employee of
32 the franchisee owning 15 percent or more of the franchised
33 business, nor a corporation, partnership, or other legal entity owned
34 by the existing owners of the franchised business. For purposes of
35 this paragraph, a “family member” means the spouse of an owner
36 of the franchised business, the child, grandchild, brother, sister,
37 or parent of an owner, or a spouse of one of those family members.
38 This paragraph does not limit the rights of the franchisor to
39 disapprove a proposed transferee as provided in subdivision (d).

1 (5) Upon the franchisor's exercise of the right of first refusal,
2 the consideration paid by the franchisor to the franchisee and
3 owners of the franchised business shall equal or exceed all
4 consideration that each of them were to have received under the
5 terms of, or in connection with, the proposed sale, assignment, or
6 transfer, and the franchisor shall comply with all the terms and
7 conditions of the agreement or agreements to sell, transfer, or
8 assign the franchised business.

9 (6) The franchisor shall reimburse the proposed transferee for
10 expenses paid or incurred by the proposed transferee in evaluating,
11 investigating, and negotiating the proposed transfer to the extent
12 those expenses do not exceed the usual, customary, and reasonable
13 fees charged for similar work done in the area in which the
14 franchised business is located. These expenses include, but are not
15 limited to, legal and accounting expenses, and expenses incurred
16 for title reports and environmental or other investigations of real
17 property on which the franchisee's operations are conducted. The
18 proposed transferee shall provide the franchisor a written
19 itemization of those expenses, and a copy of all nonprivileged
20 reports and studies for which expenses were incurred, if any, within
21 30 days of the proposed transferee's receipt of a written request
22 from the franchisor for that accounting. The franchisor shall make
23 payment within 30 days of exercising the right of first refusal.

24 (u) (1) To unfairly discriminate in favor of a dealership owned
25 or controlled, in whole or in part, by a manufacturer or distributor
26 or an entity that controls or is controlled by the manufacturer or
27 distributor. Unfair discrimination includes, but is not limited to,
28 the following:

29 (A) The furnishing to a franchisee or dealer that is owned or
30 controlled, in whole or in part, by a manufacturer, branch, or
31 distributor of any of the following:

32 (i) A vehicle that is not made available to each franchisee
33 pursuant to a reasonable allocation formula that is applied
34 uniformly, and a part or accessory that is not made available to all
35 franchisees on an equal basis when there is no reasonable allocation
36 formula that is applied uniformly.

37 (ii) A vehicle, part, or accessory that is not made available to
38 each franchisee on comparable delivery terms, including the time
39 of delivery after the placement of an order. Differences in delivery
40 terms due to geographic distances or other factors beyond the

1 control of the manufacturer, branch, or distributor shall not
2 constitute unfair competition.

3 (iii) Information obtained from a franchisee by the manufacturer,
4 branch, or distributor concerning the business affairs or operations
5 of a franchisee in which the manufacturer, branch, or distributor
6 does not have an ownership interest. The information includes,
7 but is not limited to, information contained in financial statements
8 and operating reports, the name, address, or other personal
9 information or buying, leasing, or service behavior of a dealer
10 customer, and other information that, if provided to a franchisee
11 or dealer owned or controlled by a manufacturer or distributor,
12 would give that franchisee or dealer a competitive advantage. This
13 clause does not apply if the information is provided pursuant to a
14 subpoena or court order, or to aggregated information made
15 available to all franchisees.

16 (iv) Sales or service incentives, discounts, or promotional
17 programs that are not made available to all California franchises
18 of the same line-make on an equal basis.

19 (B) Referring a prospective purchaser or lessee to a dealer in
20 which a manufacturer, branch, or distributor has an ownership
21 interest, unless the prospective purchaser or lessee resides in the
22 area of responsibility assigned to that dealer or the prospective
23 purchaser or lessee requests to be referred to that dealer.

24 (2) This subdivision does not prohibit a franchisor from granting
25 a franchise to prospective franchisees or assisting those franchisees
26 during the course of the franchise relationship as part of a program
27 or programs to make franchises available to persons lacking capital,
28 training, business experience, or other qualifications ordinarily
29 required of prospective franchisees.

30 (v) (1) To access, modify, or extract information from a
31 confidential dealer computer record, as defined in Section
32 11713.25, without obtaining the prior written consent of the dealer
33 and without maintaining administrative, technical, and physical
34 safeguards to protect the security, confidentiality, and integrity of
35 the information.

36 (2) Paragraph (1) does not limit a duty that a dealer may have
37 to safeguard the security and privacy of records maintained by the
38 dealer.

39 (w) (1) To use electronic, contractual, or other means to prevent
40 or interfere with any of the following:

1 (A) The lawful efforts of a dealer to comply with federal and
2 state data security and privacy laws.

3 (B) The ability of a dealer to do either of the following:

4 (i) Ensure that specific data accessed from the dealer's computer
5 system is within the scope of consent specified in subdivision (v).

6 (ii) Monitor specific data accessed from or written to the dealer's
7 computer system.

8 (2) Paragraph (1) does not limit a duty that a dealer may have
9 to safeguard the security and privacy of records maintained by the
10 dealer.

11 (x) (1) To unfairly discriminate against a franchisee selling a
12 service contract, debt cancellation agreement, maintenance
13 agreement, or similar product not approved, endorsed, sponsored,
14 or offered by the manufacturer, manufacturer branch, distributor,
15 or distributor branch or affiliate. For purposes of this subdivision,
16 unfair discrimination includes, but is not limited to, any of the
17 following:

18 (A) Express or implied statements that the dealer is under an
19 obligation to exclusively sell or offer to sell service contracts, debt
20 cancellation agreements, or similar products approved, endorsed,
21 sponsored, or offered by the manufacturer, manufacturer branch,
22 distributor, or distributor branch or affiliate.

23 (B) Express or implied statements that selling or offering to sell
24 service contracts, debt cancellation agreements, maintenance
25 agreements, or similar products not approved, endorsed, sponsored,
26 or offered by the manufacturer, manufacturer branch, distributor,
27 or distributor branch or affiliate, or the failure to sell or offer to
28 sell service contracts, debt cancellation agreements, maintenance
29 agreements, or similar products approved, endorsed, sponsored,
30 or offered by the manufacturer, manufacturer branch, distributor,
31 or distributor branch or affiliate will have any negative
32 consequences for the dealer.

33 (C) Measuring a dealer's performance under a franchise
34 agreement based upon the sale of service contracts, debt
35 cancellation agreements, or similar products approved, endorsed,
36 sponsored, or offered by the manufacturer, manufacturer branch,
37 distributor, or distributor branch or affiliate.

38 (D) Requiring a dealer to actively promote the sale of service
39 contracts, debt cancellation agreements, or similar products

1 approved, endorsed, sponsored, or offered by the manufacturer,
2 manufacturer branch, distributor, or distributor branch or affiliate.

3 (E) Conditioning access to vehicles or parts, or vehicle sales or
4 service incentives upon the sale of service contracts, debt
5 cancellation agreements, or similar products approved, endorsed,
6 sponsored, or offered by the manufacturer, manufacturer branch,
7 distributor, or distributor branch or affiliate.

8 (2) Unfair discrimination does not include, and nothing shall
9 prohibit a manufacturer from, offering an incentive program to
10 vehicle dealers who voluntarily sell or offer to sell service
11 contracts, debt cancellation agreements, or similar products
12 approved, endorsed, sponsored, or offered by the manufacturer,
13 manufacturer branch, distributor, or distributor branch or affiliate,
14 if the program does not provide vehicle sales or service incentives.

15 (3) This subdivision does not prohibit a manufacturer,
16 manufacturer branch, distributor, or distributor branch from
17 requiring a franchisee that sells a used vehicle as “certified” under
18 a certified used vehicle program established by the manufacturer,
19 manufacturer branch, distributor, or distributor branch to provide
20 a service contract approved, endorsed, sponsored, or offered by
21 the manufacturer, manufacturer branch, distributor, or distributor
22 branch.

23 (4) Unfair discrimination does not include, and nothing shall
24 prohibit a franchisor from requiring a franchisee to provide, the
25 following notice prior to the sale of the service contract if the
26 service contract is not provided or backed by the franchisor and
27 the vehicle is of the franchised line-make:

28
29 “Service Contract Disclosure

30 The service contract you are purchasing is not provided or backed
31 by the manufacturer of the vehicle you are purchasing. The
32 manufacturer of the vehicle is not responsible for claims or repairs
33 under this service contract.

34 _____
35 Signature of Purchaser”

36
37 (y) To take or threaten to take any adverse action against a dealer
38 pursuant to a published export or sale-for-resale prohibition because
39 the dealer sold or leased a vehicle to a customer who either
40 exported the vehicle to a foreign country or resold the vehicle in

1 violation of the prohibition, unless the dealer knew or reasonably
2 should have known of the customer's intent to export or resell the
3 vehicle in violation of the prohibition at the time of sale or lease.
4 If the dealer causes the vehicle to be registered in this or any other
5 state, and collects or causes to be collected any applicable sales
6 or use tax due to this state, a rebuttable presumption is established
7 that the dealer did not have reason to know of the customer's intent
8 to export or resell the vehicle.

9 (z) As used in this section, "area of responsibility" is a
10 geographic area specified in a franchise that is used by the
11 franchisor for the purpose of evaluating the franchisee's
12 performance of its sales and service obligations.

13 SEC. 19. Section 11713.13 of the Vehicle Code is amended to
14 read:

15 11713.13. It is unlawful and a violation of this code for any
16 manufacturer, manufacturer branch, distributor, or distributor
17 branch licensed under this code to do, directly or indirectly through
18 an affiliate, any of the following:

19 (a) Prevent, or attempt to prevent, by contract or otherwise, a
20 dealer from acquiring, adding, or maintaining a sales or service
21 operation for another line-make of motor vehicles at the same or
22 expanded facility at which the dealer currently operates a dealership
23 if the dealer complies with any reasonable facilities and capital
24 requirements of the manufacturer or distributor.

25 (b) Require a dealer to establish or maintain exclusive facilities,
26 personnel, or display space if the imposition of the requirement
27 would be unreasonable in light of all existing circumstances,
28 including economic conditions. In any proceeding under this
29 subdivision or subdivision (a) in which the reasonableness of a
30 facility or capital requirement is an issue, the manufacturer or
31 distributor shall have the burden of proof.

32 (c) Require, by contract or otherwise, a dealer to make a material
33 alteration, expansion, or addition to any dealership facility, unless
34 the required alteration, expansion, or addition is reasonable in light
35 of all existing circumstances, including economic conditions.

36 (1) A required facility alteration, expansion, or addition shall
37 not be deemed reasonable if it requires that the dealer purchase
38 goods or services from a specific vendor when substantially similar
39 goods or services are available from another vendor. This paragraph
40 does not authorize a dealer to impair or eliminate the intellectual

1 property rights of the manufacturer, manufacturer branch,
2 distributor, or distributor branch, or to permit a dealer to erect or
3 maintain signs that do not conform to the intellectual property
4 usage guidelines of the manufacturer, manufacturer branch,
5 distributor, or distributor branch. This paragraph shall not apply
6 to a specific good or service if the manufacturer, manufacturer
7 branch, distributor, or distributor branch provides the dealer with
8 a lump-sum payment of a substantial portion of the cost of that
9 good or service.

10 (2) In any proceeding in which a required facility alteration,
11 expansion, or addition is an issue, the manufacturer, manufacturer
12 branch, distributor, distributor branch, or affiliate shall have the
13 burden of proof.

14 (d) (1) Fail to pay to a dealer, within 90 days of termination,
15 cancellation, or nonrenewal of a franchise, all of the following:

16 (A) The dealer cost, plus any charges made by the manufacturer
17 or distributor for vehicle distribution or delivery and the cost of
18 any dealer-installed original equipment accessories, less any
19 amount invoiced to the vehicle and paid by the manufacturer or
20 distributor to the dealer, for all new and undamaged vehicles with
21 less than 500 miles in the dealer's inventory that were acquired
22 by the dealer from the manufacturer, distributor, or another new
23 motor vehicle dealer franchised to sell vehicles of the same
24 line-make, in the ordinary course of business, within 18 months
25 of termination, cancellation, or nonrenewal of the franchise.

26 (B) The dealer cost for all unused and undamaged supplies,
27 parts, and accessories listed in the manufacturer's current parts
28 catalog and in their original packaging, except that sheet metal
29 may be packaged in a comparable substitute for the original
30 package.

31 (C) The fair market value of each undamaged sign owned by
32 the motor vehicle dealer and bearing a common name, trade name,
33 or trademark of the manufacturer or distributor if acquisition of
34 the sign was required or made a condition of participation in an
35 incentive program by the manufacturer or distributor.

36 (D) The fair market value of all special tools, computer systems,
37 and equipment that were required or made a condition of
38 participation in an incentive program by the manufacturer or
39 distributor that are in usable condition, excluding normal wear and
40 tear.

1 (E) The dealer costs of handling, packing, loading, and
2 transporting any items or inventory for repurchase by the
3 manufacturer or distributor.

4 (2) This subdivision does not apply to a franchisor of a dealer
5 of new recreational vehicles, as defined in subdivision (a) of
6 Section 18010 of the Health and Safety Code.

7 (3) This subdivision does not apply to a termination that is
8 implemented as a result of the sale of substantially all of the
9 inventory and fixed assets or stock of a franchised dealership if
10 the dealership continues to operate as a franchisee of the same
11 line-make.

12 (e) (1) (A) Fail to pay to a dealer of new recreational vehicles,
13 as defined in subdivision (a) of Section 18010 of the Health and
14 Safety Code, within 90 days of termination, cancellation, or
15 nonrenewal of a franchise for a recreational vehicle line-make, as
16 defined in Section 3072.5, the dealer cost, plus any charges made
17 by the manufacturer or distributor for vehicle distribution or
18 delivery and the cost of any dealer-installed original equipment
19 accessories, less any amount invoiced to the vehicle and paid by
20 the manufacturer or distributor to the dealer, for a new recreational
21 vehicle when the termination, cancellation, or nonrenewal is
22 initiated by a recreational vehicle manufacturer. This paragraph
23 only applies to new and unused recreational vehicles that do not
24 currently have or have had in the past, material damage, as defined
25 in Section 9990, and that the dealer acquired from the
26 manufacturer, distributor, or another new motor vehicle dealer
27 franchised to sell recreational vehicles of the same line-make in
28 the ordinary course of business within 12 months of the
29 termination, cancellation, or nonrenewal of the franchise.

30 (B) For those recreational vehicles with odometers, paragraph
31 (1) shall apply to only those vehicles that have no more than 1,500
32 miles on the odometer, in addition to the number of miles incurred
33 while delivering the vehicle from the manufacturer's facility that
34 produced the vehicle for delivery to the dealer's retail location.

35 (C) Damaged recreational vehicles shall be repurchased by the
36 manufacturer provided there is an offset in value for damages,
37 except recreational vehicles that have or had material damage, as
38 defined in Section 9990, may be repurchased at the manufacturer's
39 option provided there is an offset in value for damages.

(2) Fail to pay to a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, within 90 days of termination, cancellation, or nonrenewal of a franchise, all of the following:

(A) The dealer cost for all unused and undamaged supplies, parts, and accessories listed in the manufacturer's current parts catalog and in their original packaging, except that sheet metal may be packaged in a comparable substitute for the original package.

(B) The fair market value of each undamaged sign owned by the motor vehicle dealer and bearing a common name, trade name, or trademark of the manufacturer or distributor if acquisition of the sign was required or made a condition of participation in an incentive program by the manufacturer or distributor.

(C) The fair market value of all special tools, computer systems, and equipment that were required or made a condition of participation in an incentive program by the manufacturer or distributor that are in usable condition, excluding normal wear and tear.

(D) The dealer costs of handling, packing, loading, and transporting any items or inventory for repurchase by the manufacturer or distributor.

(f) (1) Fail, upon demand, to indemnify any existing or former franchisee and the franchisee's successors and assigns from any and all damages sustained and attorney's fees and other expenses reasonably incurred by the franchisee that result from or relate to any claim made or asserted by a third party against the franchisee to the extent the claim results from any of the following:

(A) The condition, characteristics, manufacture, assembly, or design of any vehicle, parts, accessories, tools, or equipment, or the selection or combination of parts or components manufactured or distributed by the manufacturer or distributor.

(B) Service systems, procedures, or methods the franchisor required or recommended the franchisee to use if the franchisee properly uses the system, procedure, or method.

(C) Improper use or disclosure by a manufacturer or distributor of nonpublic personal information obtained from a franchisee concerning any consumer, customer, or employee of the franchisee.

(D) Any act or omission of the manufacturer or distributor for which the franchisee would have a claim for contribution or

1 indemnity under applicable law or under the franchise, irrespective
2 of and without regard to any prior termination or expiration of the
3 franchise.

4 (2) This subdivision does not limit, in any way, the existing
5 rights, remedies, or recourses available to any person who
6 purchases or leases vehicles at retail.

7 (g) (1) Establish or maintain a performance standard, sales
8 objective, or program for measuring a dealer's sales, service, or
9 customer service performance that may materially affect the dealer,
10 including, but not limited to, the dealer's right to payment under
11 any incentive or reimbursement program or establishment of
12 working capital requirements, unless both of the following
13 requirements are satisfied:

14 (A) The performance standard, sales objective, or program for
15 measuring dealership sales, service, or customer service
16 performance is reasonable in light of all existing circumstances,
17 including, but not limited to, the following:

18 (i) Demographics in the dealer's area of responsibility.

19 (ii) Geographical and market characteristics that affect vehicle
20 shopping patterns and vehicle preferences in the dealer's area of
21 responsibility.

22 (iii) The availability and allocation of vehicles and parts
23 inventory available to and provided to the dealer and the number
24 of units in operation of the line-make in the dealer's area of
25 responsibility.

26 (iv) Local, statewide, and national economic circumstances.

27 (v) Historical sales, service, and customer service performance
28 of the dealership and of the line-make within the dealer's area of
29 responsibility, including vehicle brand preferences of consumers
30 in the dealer's area of responsibility.

31 (B) ~~The~~ *Within 30 days after a request by the dealer, the*
32 *manufacturer, manufacturer branch, distributor, distributor branch,*
33 *or affiliate provides all information a written summary of the*
34 *methodology and all studies, reports, minutes, and other data used*
35 *or considered in establishing the performance standard, sales*
36 *objective, or program for measuring dealership sales or service*
37 *performance within 20 days upon request by the dealer. The*
38 *summary shall be in detail sufficient to permit the dealer to*
39 *determine how the standard was established.*

(2) In any proceeding under this subdivision in which the reasonableness of a performance standard, sales objective, or program for measuring dealership sales, service, or customer service performance is an issue, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate shall have the burden of proof. ~~A performance standard that requires a dealer to achieve a minimum performance level based on average, median, or ranked metrics achieved by all or a comparative group of dealers with respect to sales, service, or customer service shall be presumed to be unreasonable.~~

(3) As used in this subdivision, “area of responsibility” shall have the same meaning as defined in subdivision (z) of Section 11713.3.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.